

**TAB 5**

Ciarelli, Gregg - 30(b)(6)

July 25, 2007

New York, NY

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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THE COMMONWEALTH OF MASSACHUSETTS,	)	CIVIL ACTION NO.
Plaintiff,	)	03-CV-11865-PBS
	)	
vs.	)	
	)	VIDEOTAPED
MYLAN LABORATORIES, INC.; BARR	)	DEPOSITION OF
LABORATORIES, INC.; DURAMED	)	GREGG CIARELLI
PHARMACEUTICALS, INC.; IVAX	)	30(b)(6)
CORPORATION; WARRICK	)	
PHARMACEUTICALS CORPORATION;	)	New York,
WATSON PHARMACEUTICALS, INC.;	)	New York
SCHEIN PHARMACEUTICAL, INC.; TEVA	)	July 25, 2007
PHARMACEUTICALS USA, INC.; PAR	)	
PHARMACEUTICAL, INC.; DEY, INC.;	)	
ETHEX CORPORATION; PUREPAC	)	
PHARMACEUTICAL CO.; and ROXANE	)	Reported By:
LABORATORIES, INC.,	)	CATHI IRISH,
Defendants.	)	RPR, CLVS

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Henderson Legal Services  
202-220-4158

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<p style="text-align: right;">30</p> <p>1 A. No.</p> <p>2 Q. And when did -- when did you first have</p> <p>3 -- take the position as described in the</p> <p>4 organizational chart?</p> <p>5 A. November of 1997.</p> <p>6 Q. Okay. So from November 1997, at least</p> <p>7 through the date of this org chart, which is</p> <p>8 shown as March of 2004, your position --</p> <p>9 A. No.</p> <p>10 Q. How long did you hold the position?</p> <p>11 A. Until sometime in the year 2000.</p> <p>12 Q. Okay. All right. In your position,</p> <p>13 1990 -- November of 1997 until 2000 when it</p> <p>14 changed, what responsibilities did you have for</p> <p>15 pricing?</p> <p>16 A. I was the administrator of getting the</p> <p>17 prices into the systems and processes, and then</p> <p>18 working with the contracts group to get the</p> <p>19 prices within the systems and as normal course of</p> <p>20 business practice.</p> <p>21 Q. So you had some responsibility for --</p> <p>22 for -- strike that.</p>	<p style="text-align: right;">32</p> <p>1 the contracting department.</p> <p>2 Q. And was that the department that Mr.</p> <p>3 Powers was in charge of?</p> <p>4 A. Yes.</p> <p>5 Q. Can you just describe generally what</p> <p>6 Mr. Powers' duties and responsibilities were as</p> <p>7 the head of the contract department?</p> <p>8 A. Working with the sales and marketing</p> <p>9 teams to do contracts, bids, awards, getting all</p> <p>10 the data properly into our systems and processes.</p> <p>11 Q. And in that role, was Mr. Powers'</p> <p>12 responsibility limited with regard to Roxane</p> <p>13 Laboratories only to the branded drugs?</p> <p>14 A. No, he had responsibility for branded</p> <p>15 and generic.</p> <p>16 Q. Were his responsibilities with regard</p> <p>17 to the generic drugs the same as his</p> <p>18 responsibilities for the branded drugs?</p> <p>19 A. Yes.</p> <p>20 Q. In the job title as shown in the org</p> <p>21 chart I just showed you, it also refers to</p> <p>22 marketing. What were your duties and</p>
<p style="text-align: right;">31</p> <p>1 What responsibility did you have for</p> <p>2 setting up the systems for maintaining prices?</p> <p>3 A. I didn't have any responsibility for</p> <p>4 the systems.</p> <p>5 Q. So what did your responsibility entail?</p> <p>6 A. The processes for getting prices</p> <p>7 approved.</p> <p>8 Q. In that position, did you have any</p> <p>9 other people other than Mr. Powers reporting to</p> <p>10 you?</p> <p>11 A. Yes.</p> <p>12 Q. Okay, who else? I don't need the</p> <p>13 names, at least at this point. Can you just give</p> <p>14 me the functions of the people who worked for</p> <p>15 you?</p> <p>16 A. Yes, I had a controller reporting to</p> <p>17 me, forecasting manager, contracting manager, and</p> <p>18 I believe that was it.</p> <p>19 Q. In the position that you held from</p> <p>20 November of 1997 through 2000, what were your</p> <p>21 responsibilities for contracts?</p> <p>22 A. I had the functional responsibility for</p>	<p style="text-align: right;">33</p> <p>1 responsibilities with regard to marketing?</p> <p>2 A. I was the marketing, controlling, so</p> <p>3 basically the financial budgeting, forecasting,</p> <p>4 analysis on the marketing.</p> <p>5 Q. Did the -- did the staff who were</p> <p>6 responsible for marketing the Roxane branded</p> <p>7 drugs report to someone other than yourself?</p> <p>8 A. Yes, they did.</p> <p>9 Q. And who did they report to?</p> <p>10 A. Gary Ellexson.</p> <p>11 Q. And do you know what his -- what Mr.</p> <p>12 Ellexson's title was?</p> <p>13 A. I believe it was executive director of</p> <p>14 marketing.</p> <p>15 Q. Was there a separate function for</p> <p>16 marketing the branded drugs for Roxane</p> <p>17 Laboratories from the group that marketed the</p> <p>18 multi-source drugs?</p> <p>19 A. Yes.</p> <p>20 Q. Who headed up the marketing department</p> <p>21 for the branded drugs; was that Mr. Ellexson?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">34</p> <p>1 Q. And did he also have any responsibility</p> <p>2 for the generic drugs?</p> <p>3 A. No, he did not.</p> <p>4 Q. Now, I think you said that your</p> <p>5 position changed in 2000.</p> <p>6 A. Yes.</p> <p>7 Q. And approximately when in 2000, do you</p> <p>8 know?</p> <p>9 A. Right around the turn of the year.</p> <p>10 Q. So at the end of 2000?</p> <p>11 A. The end of -- no, the beginning of</p> <p>12 2000.</p> <p>13 Q. How did it change?</p> <p>14 A. I gave up the controlling</p> <p>15 responsibilities, the financial responsibilities.</p> <p>16 Q. So you retained responsibility for the</p> <p>17 contracting department?</p> <p>18 A. Yes.</p> <p>19 Q. And for -- so you no longer had the</p> <p>20 marketing financial responsibilities, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So does Mr. Powers still report to you?</p>	<p style="text-align: right;">36</p> <p>1 us, and ask if you can identify that for the</p> <p>2 record.</p> <p>3 A. Yes, it's a note to Miss Terri Factora</p> <p>4 at First DataBank listing the WAC and AWP prices</p> <p>5 for Roxicodone products.</p> <p>6 Q. Is Roxicodone one of the branded</p> <p>7 products belonging to Roxane Laboratories?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Okay. I'm going to have to share this</p> <p>10 with you, actually, but --</p> <p>11 MS. WITT: I've got some copies.</p> <p>12 MR. HEIDLAGE: Actually, let's take a</p> <p>13 minute and it will be helpful to have a couple</p> <p>14 copies, yes.</p> <p>15 THE VIDEOGRAPHER: The time is 10:12</p> <p>16 a.m. We're going off the record.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: The time is 10:29</p> <p>19 a.m. We're back on the record.</p> <p>20 BY MR. HEIDLAGE:</p> <p>21 Q. Mr. Ciarelli, before we broke to have</p> <p>22 photocopies made, I'd placed before you what was</p>
<p style="text-align: right;">35</p> <p>1 A. Yes.</p> <p>2 Q. And are his duties and responsibilities</p> <p>3 the same as they were in 1997?</p> <p>4 A. Yes.</p> <p>5 Q. From 1997 through the time period in</p> <p>6 which the Roxane Laboratories branded drugs were</p> <p>7 actually transferred to BIPI, did -- did Mr.</p> <p>8 Powers have any responsibility for reporting</p> <p>9 prices to the price reporting services for the</p> <p>10 multi-source drugs?</p> <p>11 A. Yes, he did.</p> <p>12 Q. So he was reporting for both multi-</p> <p>13 source and branded drugs?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know if there's anyone who</p> <p>16 reported to him that also assisted in that</p> <p>17 function?</p> <p>18 A. I don't recall.</p> <p>19 Q. I'm going to show you a document which</p> <p>20 was previously marked as Exhibit Waterer 079, and</p> <p>21 we don't have a copy of that because the</p> <p>22 originals are not -- those originals are not with</p>	<p style="text-align: right;">37</p> <p>1 Exhibit Waterer 079. But before we go into that,</p> <p>2 just for the record and to make certain we are</p> <p>3 clear, at the point at which you began testifying</p> <p>4 with regard to the price reporting of Roxane</p> <p>5 Laboratories branded drugs, you would be</p> <p>6 testifying -- it's my understanding you would be</p> <p>7 testifying on behalf of Roxane Laboratories, and</p> <p>8 just to confirm; is that correct?</p> <p>9 A. Yes.</p> <p>10 MR. HEIDLAGE: Are we agreed?</p> <p>11 MS. WITT: Yes.</p> <p>12 BY MR. HEIDLAGE:</p> <p>13 Q. Mr. Ciarelli, I think you testified</p> <p>14 that Mr. Powers, who works for you, was</p> <p>15 responsible for reporting the prices that are</p> <p>16 published in the price reporting compendia; is</p> <p>17 that correct?</p> <p>18 MS. WITT: Can I hear that question</p> <p>19 back? Is that term in the present tense?</p> <p>20 MR. HEIDLAGE: Good point. Let me go</p> <p>21 back. Is there a difference?</p> <p>22 BY MR. HEIDLAGE:</p>

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<p style="text-align: right;">94</p> <p>1 Q. And the someone in marketing during 2 this time period, do you know who that would have 3 been? 4 <b>A. It would have been the product manager 5 for Roxicodone, but I don't know -- I don't 6 remember who in particular was the product 7 manager at the time.</b> 8 Q. So if we wanted to know how the WAC -- 9 strike that. 10 If we wanted to know how the AWP was 11 set for Roxicodone, how would we determine that? 12 Let me step back for a second. 13 First of all, do you know how the AWP 14 was set for Roxicodone in or about September of 15 2000? 16 <b>A. No, I don't.</b> 17 Q. If we wanted to find out how the AWP 18 was determined for Roxicodone during this time 19 period, what would we need to do? 20 <b>A. Talk to the people who would have been 21 involved in that process.</b> 22 Q. And it is your understanding that there</p>	<p style="text-align: right;">96</p> <p>1 Q. Okay. And what competitive prices 2 would be reviewed by Roxane to determine -- of 3 the competitors would be reviewed by Roxane to 4 determine its AWP? 5 <b>A. Their AWP's and the AWP's of those 6 competing products.</b> 7 Q. So at least one of the considerations 8 that Roxane would have gone through to set its 9 AWP during the September of 2000 time period 10 would be the AWP's as reported and published by 11 the competitors -- competitors to the product; is 12 that correct? 13 MS. WITT: Object to the form of the 14 question and beyond the scope of the deposition 15 notice. 16 THE WITNESS: Yes, for these products, 17 for these particular products, and again, they 18 had generic competition. If they did not have 19 competition, it would be the formula that we 20 spoke about earlier. 21 BY MR. HEIDLAGE: 22 Q. But given the fact that the AWP of this</p>
<p style="text-align: right;">95</p> <p>1 would be documentation of that process, at least 2 one element of which would be an e-mail to the 3 pricing committee, presumably making a 4 recommendation as to a variance or a different 5 AWP for this product; is that correct? 6 <b>A. Yes.</b> 7 Q. And what are the considerations that 8 would be taken into account with regard to 9 setting the AWP for a drug such as Roxicodone 10 during this time period? 11 <b>A. The competitive marketplace.</b> 12 Q. And what elements in the competitive 13 marketplace would Roxane have considered and 14 reviewed during this time period? 15 <b>A. What the competitive drugs' pricing 16 would have been during those times. And that 17 would consist of -- in this case, these products 18 are generics, so there would be multiple 19 manufacturers of these individual products and/or 20 strengths of products that could be used in 21 multiples to come up with the same milligrams as 22 these products.</b></p>	<p style="text-align: right;">97</p> <p>1 -- these drugs is not in accordance with the 2 standard markup, then this would lead you to 3 believe and understand that the AWP was set with 4 the alternative procedure, correct? 5 <b>A. Correct.</b> 6 MS. WITT: Object to the form. 7 BY MR. HEIDLAGE: 8 Q. And that alternative procedure that 9 Roxane used was to review the AWP's as published 10 by the competitive products? 11 <b>A. Correct.</b> 12 Q. Did Roxane have any general practice 13 and procedure for determining how its published 14 AWP would relate to the AWP's of the other 15 competitors in the marketplace for drugs such as 16 Roxicodone that had generic competition? 17 MS. WITT: Object to the form of the 18 question. 19 THE WITNESS: None that I'm aware of. 20 BY MR. HEIDLAGE: 21 Q. Do you know how Roxane set its WAC for 22 Roxicodone during this time period?</p>

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<p style="text-align: right;">98</p> <p>1     <b>A. It would have been again based on</b>  2     <b>competitive products.</b>  3     Q. When you say competitive products, what  4     would Roxane review to determine the WAC that it  5     established for its Roxicodone?  6     <b>A. We'd look at -- it would look at the</b>  7     <b>competition in the market and the other</b>  8     <b>alternative products that could be used, whether</b>  9     <b>they be direct competitors, oxycodone based, or</b>  10    <b>other products that are different molecules that</b>  11    <b>have the same type of palliative effect.</b>  12    And the marketing teams would --  13    actually, their responsibilities would be to come  14    up with their recommendation on what the WAC  15    price should be, based on, you know, looking at  16    the market and general business practices.  17    Q. So given the fact that the standard --  18    strike that.  19    Were the considerations that Roxane  20    took into account in setting its WAC price for  21    the Roxicodone were the prices that you reviewed,  22    the published prices of the competitors'</p>	<p style="text-align: right;">100</p> <p>1     Q. And also discounts to managed care?  2     <b>A. Managed care, federal government, they</b>  3     <b>would take the form of a rebate, so they would go</b>  4     <b>to the -- in that case Medicaid would go to the</b>  5     <b>federal government as a check, not a discount.</b>  6     <b>The wholesaler would not see that discount.</b>  7     Q. Okay.  8     <b>A. And to the managed care organization,</b>  9     <b>based on dispensing of the drug, a check would be</b>  10    <b>made to the managed care organization.</b>  11    (Exhibit Ciarelli 004, document  12    Bates stamped RLI-TX 67336 through 338, marked  13    for identification, as of this date.)  14    <b>BY MR. HEIDLAGE:</b>  15    Q. Mr. Ciarelli, what I've placed before  16    you and marked as Exhibit Ciarelli 004 is a  17    document with Bates numbers RLI-TX 67336 through  18    67338, and ask you if that's a document that you  19    have ever seen before.  20    <b>A. Not this particular one, no.</b>  21    Q. Have you seen documents like that?  22    <b>A. I don't recall seeing this particular</b></p>
<p style="text-align: right;">99</p> <p>1     products?  2     <b>A. Yes.</b>  3     Q. Anything else?  4     <b>A. No.</b>  5     Q. Just so I understand, in Exhibit  6     Waterer 079, which is the -- the document that  7     had the initial launch of the Roxicodone, what  8     was the function -- or strike that.  9     What relationship, if any, did the AWP  10    have to the prices that Roxane actually charged  11    to its customers?  12    <b>A. AWP had no bearing on what Roxane</b>  13    <b>charged its customers. The customers were</b>  14    <b>charged based on WAC or a discount off of WAC.</b>  15    Q. And the discount off WAC that you're  16    talking about was either the 2 percent prompt pay  17    discount, the initial stocking discount that  18    we've seen?  19    <b>A. Right.</b>  20    Q. Discounts in hospital contracts, I  21    think you said?  22    <b>A. Yes.</b></p>	<p style="text-align: right;">101</p> <p>1     <b>type of document, no.</b>  2     Q. On the first page, there is a listing  3     of people with the heading Internal Distribution  4     List. Can you determine from that listing which  5     company these people worked for?  6     <b>A. I believe Ed Gunn worked for Roxane.</b>  7     <b>Craig Russell worked for Roxane. I don't know</b>  8     <b>Lewis. I don't know Querry, Jefferis. Jerry</b>  9     <b>Hart worked for Roxane. Mark Shaffer worked for</b>  10    <b>Roxane. Fred Duy worked for Roxane. Richard</b>  11    <b>Feldman worked for Roxane. Bob Sykora, Roxane.</b>  12    <b>John Powers, Roxane. Michael Schobelock for</b>  13    <b>Roxane. Beth Trowbridge worked for Roxane. Dr.</b>  14    <b>Shepard worked for BIPI. Kathy Hirst, BIPI. Kim</b>  15    <b>Griffin, BIPI. Mike Kavanaugh, BIPI. Gary</b>  16    <b>Nichols, BIPI. And the other folks appear to be</b>  17    <b>people that would be involved in the launch</b>  18    <b>meeting.</b>  19    Q. What were the functions -- so is this a  20    launch document?  21    <b>A. It's a field force communication that's</b>  22    <b>dated September -- there is no date on here. I</b></p>